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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 191

NATURAL GAS PIPELINE COMPANY OF AMERICA,
Appellant,

vs.

PANOMA CORPORATION AND THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

STATEMENT AS TO JURISDICTION

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STATUTES AND OTHER AUTHORITIES CITED

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APPEAL FROM THE SUPREME COURT OF OKLAHOMA

STATEMENT AS TO JURISDICTION—Filed June 15th, 1954

In compliance with Rule 12, Rules of the Supreme Court of the United States, as amended, appellant Natural Gas Pipeline Company of America (Natural) submits its statement particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the opinion and judgment of the Supreme Court of Oklahoma (the state court), in which Natural was plaintiff in error and the Panoma Corporation (Panoma) and the Corporation Commission of the State of Oklahoma (the Commission) were defendants in error.

I.

Opinion Below

The opinion of the state court from which this appeal is taken has not yet been reported. A copy of the majority opinion reflecting the views of five members of the court and a copy of the minority opinion representing the views of four members of the court are attached hereto as Appendix A.

II.

The "Statute" Involved

Appellant in this proceeding challenges the validity, as applied to its purchases of residue gas from Panoma, of two orders of the Commission held valid by the opinion and judgment of the state court. Those orders are No. 19,514 (basic order) and No. 24,745 (the Panoma order), which interprets such basic order and applies same to the purchase of residue gas by Natural from Panoma.

The basic order (App. B) requires:

> "1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead, or less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch."

The decretal portions of the Panoma order (App. D) are as follows:

> "1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with Order No. 19,514, by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas here-

tofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

"2. That Natural Gas Pipeline Company of America does not comply with Order No. 19,514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base of 16.5 pounds per square inch absolute pressure, and it is directed to desist from so doing and is directed to comply with said order.

"3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America."

In its opinion and judgment the state court affirmed the Panoma order issued on May 17, 1951, copy of which is attached hereto as Appendix D. Such order was purportedly based on the basic order issued December 9, 1946, copy of which is attached hereto as Appendix B. The basic order had theretofore been interpreted and its application to certain operations of Phillips Petroleum Company (Phillips) in its Order No. 19,702 (Phillips order) had been determined by the Commission, copy of which is attached hereto as Appendix C. The basic order and the Phillips order, respectively, were affirmed by the state court in a consolidated proceeding, 203 Okla. 35, 220 P. 2d 279. In due course this court considered and upheld

the basic order in *Cities Service Oil Co.* v. *Peerless O. & G. Co.*, 340 U. S. 179, and considered and upheld the Phillips order in *Phillips Pet. Co.* v. *Oklahoma*, 340 U. S. 190, as applied to the issues and facts involved in those cases.

The basic order was directed to the producer, not to the purchaser, and required the producer to obtain a price of 7¢ per m.c.f. at the wellhead on a stated pressure base for all natural gas produced from the Guymon-Hugoton Field in Texas County, Oklahoma. In the Phillips order the Commission held that Phillips was *complying* with the basic order for the reason that the price received by Phillips from the sale of residue gas to Panhandle Eastern Pipe Line Company (Panhandle) plus the sums received from the liquid constituents extracted from the natural gas prior to the delivery of the residue gas to Panhandle aggregated 6.9855¢ per m.c.f., the approximate equivalent of the wellhead price fixed in the basic order. Under Phillips' contract with Panhandle, Phillips received from the latter 4.1716¢ per m.c.f. for the residue gas. Phillips also received from the sale of liquids extracted from its natural gas an additional 2.8138¢ per m.c.f. Thus, the total realization by Phillips was 6.9855¢ per m.c.f. It was not contended in either the *Cities Service* case or the *Phillips* case that the Commission had the power to fix a price of residue gas sold at the outlet side of a natural gasoline plant, at the intake of an interstate pipeline system, for immediate transportation to other States.

In the Panoma order, the Commission held that Panoma was *violating* the basic order, notwithstanding the substantially identical handling of the natural gas by Panoma as the handling by Phillips. The sales contract between Panoma and its purchaser, Natural, was substantially identical in its terms with the contract between Phillips and Panhandle. Under each contract the producer owned the

gas reserves, drilled and operated the wells, gathered the natural gas from the various wells, and transported it several miles to a gasoline plant owned by the producer at which the liquefiable constituents were extracted and retained or sold by the producer and the residue gas only was sold for immediate transportation to other states. Panoma was paid by Natural 5.12¢ per m.c.f. on the pressure base set forth in the basic order, which added to the amounts received from the sale by Panoma of the liquid constituents theretofore removed (4.181¢ per m.c.f.) aggregated 9.301¢ per m.c.f., as compared with 6.9855¢ per m.c.f. received by Phillips for the constituents of its natural gas. Thus, the Commission held that Panoma is *violating* the basic order though receiving 9.301¢ per m.c.f., but that Phillips is complying with the same order when receiving only 6.9855¢ per m.c.f. for its natural gas![1]

Not only did the Commission hold that Panoma was violating the basic order by paying the contract price, 5.12¢ per m.c.f. on residue gas, but it directed Natural to pay Panoma 7¢ per m.c.f. for all natural gas temporarily delivered by Panoma into Natural's compressor station (where the pressure was increased and the natural gas returned to Panoma at Panoma's gasoline plant), with no deduction in volume for shrinkage occasioned by Panoma's

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[1] The contract involved in the Phillips order is one of the identical contracts considered by this court in *Panhandle Eastern Pipe Line Co.* v. *Robert S. Calvert et al.*, 347 U.S. 157, in which this court held that the sale on the outlet side of Phillips' gasoline plant and delivery through a meter station directly into Panhandle's interstate pipeline system was a part of interstate commerce and could not be taxed by the State of Texas because in violation of the Commerce Clause. That contract is also one of the contracts involved in *Phillips Petroleum Co.* v. *State of Wisconsin*, — U.S. —, decided on June 7, 1954, 22 Law Week 4281, in which this court held that the sale of residue gas, after the producing, gathering and processing of the natural gas had been completed, is a sale in interstate commerce and that under the Natural Gas Act such sale is within the exclusive jurisdiction of the Federal Power Commission.

extracting the liquids, no allowance for the sums received by Panoma for the liquids extracted and no deduction for gas used by Panoma for fuel in its gasoline plant. This amount (7¢ per m.c.f.) when added to the sums received by Panoma for the liquid constituents (4.181¢ per m.c.f.) aggregates 11.181¢ per m.c.f., as compared with 6.9855¢ per m.c.f. received by Phillips. Not content, however, with requiring Natural to pay the increased price (7¢ per m.c.f.) for *future* deliveries of residue gas by Panoma, the Commission directed Natural to pay Panoma the sum of $1,334,960.50, representing the difference between 7¢ per m.c.f. and the amount actually paid by Natural to Panoma under its contract for residue gas (5.12¢ per m.c.f.) delivered *prior* to the entering of the Panoma order; and the Commission directed Panoma to discontinue deliveries to Natural under its contract unless the latter paid that sum to Panoma within 20 days from the date of the order!

III.

Questions Presented

1.

Whether the Corporation Commission of Oklahoma has the power, consistently with the Commerce Clause of the Federal Constitution, to apply a basic order fixing the wellhead price of raw natural gas to a purchase by Natural from Panoma of residue gas only—the constituent remaining after the natural gas has been produced, gathered and processed and valuable liquid hydrocarbons have been removed and retained or sold by Panoma, the producer—where the purchase is made, the residue gas is delivered, and title thereto passes at the point of intake into Natural's interstate pipeline system for immediate and continuous transportation in interstate commerce.

2.

Whether, consistently with the Equal Protection Clause of the Fourteenth Amendment, a general order of the Commission (the basic order) prohibiting producers from producing raw natural gas from the formations unless the same be sold at a wellhead price of 7¢ per m.c.f. on a stated pressure base may be so applied as to prevent Panoma from continuing the sale to Natural of residue gas only on the outlet side of Panoma's gasoline plant for delivery into Natural's interstate pipeline system, for immediate transportation in interstate commerce, at a price which added to the amounts received by Panoma from the sale of the liquid constituents removed at the gasoline plant aggregates 9.301¢ per m.c.f., and requiring Natural to pay Panoma a price for the residue gas which added to such amounts received from the sale of the liquids as would aggregate 11.181¢ per m.c.f., when the Commission in applying the same basic order to a sale by Phillips, another producer from the same field selling under a substantially identical contract, holds that Phillips is complying with the basic order when it receives from the sale of the residue gas to Panhandle a price which added to the amounts received from the sale of the liquid constituents aggregates only 6.9855¢ per m.c.f. on the same pressure basis.

3.

Whether the Commission has the power, consistently with the Due Process Clause of the Fourteenth Amendment, in a purported application of the basic order which was directed to Panoma as producer and not to Natural as purchaser, to impose on Natural, as the purchaser of residue gas only, at the outlet of Panoma's gasoline plant and at the point of intake into Natural's interstate pipeline system, an obligation operating retrospectively to pay

Panoma for residue gas purchased by Natural prior to the order purporting to impose such obligation the sum of $1,334,960.50, representing the difference between the price of 7¢ per m.c.f. applied to the volumes of gas delivered temporarily into Natural's custody at Natural's compressor station (to be compressed and returned to Panoma) and the contract price paid by Natural to Panoma for residue gas delivered at the outlet of Panoma's gasoline plant, on pain of termination of deliveries by Panoma, when at the time Natural purchased and Panoma delivered such residue gas there was no order of the Commission fixing, or purporting to fix, the price of such residue gas at the point of delivery or otherwise applying to the conditions under which Natural received delivery of and obtained title to such residue gas from Panoma.

IV.

Statement of the Case

By the basic order, directed to producers of natural gas and not to purchasers of the residue, the Commission required that no gas be taken from the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, and sold "at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural gas," measured on a stated pressure base. Thereafter, in the same proceeding it entered the Phillips order, an interpretation and application of the basic order, in which it held that the basic order meant

> ". . . to *prohibit the production* of natural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said order, if same were sold, but if not sold, that said gas should be *so utilized and/or sold*, that the producer would

> *realize* therefrom the *equivalent* of 7¢ per thousand cubic feet at the wellhead. . . ." [2]

In that order the Commission held that Phillips was not injured by the application of the 7¢ price fixed by the basic order "since it is already presently realizing approximately that amount at this time." That realization, as shown by the findings contained in the order, was 4.1716¢ per m.c.f. from the sale to Panhandle of the residue gas and 2.8138¢ per m.c.f. from the sale of the liquefiable constituents extracted by Phillips at its gasoline plant prior to the sale of the residue gas, which aggregated 6.9855¢ per m.c.f. *The Phillips contract with Panhandle was in all essential terms substantially identical with Panoma's contract with Natural except as to the prices received by the producers.*

Panoma's Contract With Natural

On December 1, 1946, Harrington & Marsh (assignors of Panoma) entered into a contract with Natural, for the sale only of the residue gas constituent of the production from its wells drilled and to be drilled on 78,000 acres in the Guymon-Hugoton Field up to a maximum of 76 million cubic feet daily. By that contract, Natural, a natural gas company, purchased such gas for immediate transportation in interstate commerce to states other than Oklahoma and sale in such states for ultimate public consumption. Buyer was to pay therefor 6¢ per m.c.f. until July 1, 1951, then 7¢ for a 5-year period, and 8¢ for the remainder of the contract period with certain adjustments based on B.t.u. content. These prices, however, were based on measurement at 16.4 lbs. When adjusted to measurement at 14.65 lbs., they are 5.359¢, 6.253¢ and 7.146¢, respectively.

[2] All emphasis herein by italics is supplied.

Sellers, however, expressly "*reserved*" the right (as did Phillips in its contract with Panhandle) to extract from the gas to be delivered under the contract the nitrogen, helium, natural gasoline, butane, propane, and other hydrocarbons except methane, together with any methane necessarily removed in the process of recovering the other hydrocarbons. They agreed, as did Phillips in its contract with Panhandle, that their gasoline plant for recovering such hydrocarbons (to be constructed on Natural's pipeline on the discharge side of Natural's compressor station) would be maintained efficiently. The terms describing the physical handling of the gas and determining the point at which the title to the residue gas passed to Natural were:

> "Sellers shall deliver gas hereunder *into the custody* of Natural and Natural shall *first receive the custody* of same, at the intake side of its Station 1, at a gauge pressure of not less than 150 pounds per square inch. The gas shall be compressed at said station by Natural according to the operating practice which it may from time to time follow, but not in excess of a gauge pressure of 800 pounds per square inch. Natural shall, after compression, then *redeliver* said gas to Sellers' gasoline plant at an average daily temperature not in excess of 95° F. and shall use all reasonable effort to keep such gas free from compressor lubricating oil. Sellers shall be entitled to all hydrocarbons removed from the gas by such compression provided the collecting thereof be at their sole cost and risk. *Sellers shall*, after treatment at their gasoline and dehydration plants, *redeliver* the gas *into* Natural's pipeline at the outlet of said plants at a temperature within 5° F. of a temperature at which the gas is received by Sellers at the inlet of said plants, provided Sellers shall not be required to reduce the temperature of such gas below 70° F. A metering station to be installed and operated by Natural as provided in Article Twelfth hereof shall be located near the outlet of said plants

> *at which point title* to the gas *shall pass to Natural;* except, the gas required by Natural for its compressor station operation shall be metered separately at a point at or near said station and title thereto shall pass to Natural as used."

The quality of the gas for which Natural was to pay the contract price was set forth in the contract in the following language:

> "The gas delivered hereunder *at the metering equipment* of Natural shall, subject to the standards in this contract expressed, be natural gas as produced in its natural state, *except:* that Sellers shall treat the gas for recoverable constituents as in Article Fifth herein provided[3] and shall, if necessary, treat such gas in order to bring it within the standards of purity hereinafter in this Article provided."

Such standards of purity included freedom from liquids, a maximum sulphur content and a minimum B.t.u. content.

Clearly this contract is one for the sale of the residue gas only, delivered at the meter station located at the outlet of Panoma's gasoline plant and the intake of Natural's pipeline system.

Harrington, President of Panoma, who had been engaged in the gas business for many years, explained that the placing of the gasoline plant on the discharge side rather than on the intake side of the compressor station was *for the mutual benefit* of Natural and Panoma; that otherwise Natural would have a higher compression ratio, and that *it is more economical for Panoma to extract the liquids when the pressure of the gas has been raised to six to eight hundred pounds;* and that the delivery of raw gas into Natural's compressor station was only a delivery into Nat-

[3] Article Fifth dealt with the reservation by sellers of nitrogen, helium, natural gasoline, butane, propane, etc.

ural's "custody,"—not a sale. He acknowledged that title passed at the meter station and said "*that's our point of sale*"; that "obviously" the sale was of residue gas and not raw natural gas; that the price Natural pays is not for the volumes of gas delivered into Natural's compressor station but for the volumes of gas measured after the gas has gone through Panoma's gasoline and dehydration plants; and that the quality of the gas for which Natural pays "obviously" is not the quality of the gas that goes into the compressor station but that of the gas which goes through the meter. When his attention was called to the fact that a part of the gas which went into the compressor station was used by Panoma for fuel in Panoma's gasoline plant, for which Panoma paid Natural nothing, he testified:

> "It's *our* gas except it's in *their* custody. It's in your custody *to be returned to us.*"

Panoma's "Realization"
at the Contract Price

During the period from October, 1948, through December, 1950, Panoma produced from its wells 70,992,632 m.c.f. of natural gas, measured at a pressure base of 14.65 pounds. It realized from the sale of liquids extracted therefrom $2,968,405.33, equivalent to 4.181¢ per m.c.f. of raw gas, and from the sale to Natural of the residue the sum of $3,634,523.74, equivalent to 5.12¢ per m.c.f. of raw gas. Its total receipts from sales of all constituents, $6,602,929.07, were, therefore, the equivalent of 9.301¢ per m.c.f. for all natural gas produced from Panoma's wells, as compared with 6.9855¢ realized by Phillips from the constituents of its gas.

The Proceeding in which the Panoma Order was Entered and the Impact of the Order

On January 30, 1951, Panoma instituted a proceeding against Natural before the Commission in the form of an application for an interpretation by the Commission of the basic order. In the application Panoma asserted that since the effective date of the basic order Natural had continued to purchase gas from Panoma and had paid therefor a sum less than the price fixed by such order; that Panoma had made demand on Natural to pay the price provided by said order, and that "notwithstanding the fact that said order is applicable to said gas, it has refused to do so." The application concluded:

> "That applicant herein does not desire to continue to deliver gas in violation of said order and, therefore, requests that this Commission determine: first, whether or not its deliveries are a violation of said order; and second, whether or not it should discontinue such deliveries if such deliveries are in violation of said order."

The prayer was that the Commission "determine the issues herein presented and issue an appropriate order in respect thereto."

In its response Natural set up the provisions of the contract, alleging that the gas had been handled as therein provided; that the parties had faithfully performed the obligations of the contract; that Panoma sold none of the production covered by its contract with Natural at the wells or elsewhere in its natural state; and that Panoma realized (through the sale of liquid hydrocarbons extracted at Panoma's plant and from the sale of residue gas to Natural) more than 7¢ per m.c.f. for its natural

gas, the price fixed under the basic order as interpreted in the Phillips order.

Natural asserted that if the order were interpreted as requiring Panoma to realize for the residue constituent of the gas (the methane) the wellhead price fixed by the basic order for raw natural gas produced, without due allowance for the sums received by applicant from the sale or utilization of the other constituents, and if, under the facts, the Commission should require that Panoma cease to deliver such residue gas to Natural under the contract, such order (1) would be discriminatory, arbitrary and void, and contrary to the provisions of all applicable statutes authorizing action by the Commission, (2) would be violative of certain sections of the Oklahoma Constitution and the Fourteenth Amendment to the Constitution of the United States, (3) would impose a discriminatory and unlawful burden upon interstate commerce, and (4) would be an attempt to regulate interstate commerce, in violation of the provisions of Section 8 of Article I of the Constitution of the United States (the Commerce Clause); and that to the full extent of its interest in the proper construction of such order, Natural invoked the protection of such constitutional provisions.

The Commission by the order here involved imposed on Natural an obligation to pay Panoma for the residue gas 7¢ per m.c.f. for the quantity of *raw* natural gas delivered by Panoma *into Natural's compressor station.* Natural was directed, *within 29 days, to "comply" with the basic order by paying to Panoma the difference between the amount it had paid Panoma and the amount the Commission held Panoma was entitled to receive for gas theretofore delivered* so that the total amount paid for gas "delivered" during the period covered by such payments would equal 7¢ per m.c.f. for the amount of raw natural gas "*delivered*

to said compressor station." Panoma was ordered to cease delivering gas to Natural unless Natural should pay such difference within 20 days.

The additional payment required of Natural for past deliveries amounts to $1,334,960.50. That sum, added to the $6,602,929.07 received by Panoma from the sales of extracted liquids and from the sales of residue to Natural at the contract price would give Panoma a total realization from the constituents of its natural gas of 11.181¢ per m.c.f.,—60% higher than the Phillips realization. This differential would of course, continue in the future.

The basic order deals only with *sales* of raw natural gas at the wellhead. It does not purport to deal with deliveries into temporary custody in the nature of bailments. The Commission did not find (nor could it find under the evidence) that Natural purchased the raw gas delivered into its custody at the compressor station. On what legal basis, therefore, could the wellhead price be applied to a delivery into Natural's compressor station for the temporary purpose stated? The effect of the order is to require Natural to pay not only the wellhead price fixed for raw gas for the quantities of residue gas to which Natural acquires title at the meter station but also that it pay for the volumes of gas represented by the shrinkage resulting from the removal of liquid hydrocarbons reserved by Panoma and the gas used by Panoma as fuel in its gasoline plant, title to which never passed to Natural.

The Review in the State Court

Natural in due course instituted a proceeding in the Supreme Court of Oklahoma (the State Court) for a review of the Panoma order; and on September 15, 1953, that Court, by a sharply divided vote, 5 to 4, affirmed the Commission's order (App. A).

The majority of the Court (in an opinion by Justice Welch) affirmed the order on a theory entirely different from that announced by the Commission. So far as the opinion can be rationalized, the majority of the Court proceeded on one of two theories, each inconsistent with the other and both inconsistent with the Commission's theory. In total disregard of the plain terms of the contract and the intent of the contracting parties as reflected by the uncontradicted evidence, the Court came up with the amazing suggestion that Natural purchased the *raw* natural gas (referred to in the majority opinion as "rough" gas) either (a) at the wellhead or (b) while still in the producing formations! The contract is not ambiguous, and it is clear, as a matter of law, that the majority's wavering, ambiguous and uncertain interpretation is "manifestly wrong."

Four members of the Court, in an opinion by the Chief Justice, vigorously dissented. They insisted, among other things, that Natural at no time purchased the raw gas; that the contract plainly stated that title to the gas purchased passed to Natural at the meter station and that at such point the reserved liquid hydrocarbons had been extracted; that by the contract Panoma had specifically *reserved* the right to extract nitrogen, helium, natural gasoline, etc.; that Panoma had received $2,968,405.33 from its extracted liquids and $3,634,523.74 from the sale of residue to Natural, aggregating $6,602,929.07, or 9.301¢ per thousand cubic feet; that Panoma had received more than the 7¢ required and for that reason Natural owed Panoma nothing.

The views of the dissenting justices were forcefully expressed in the following extract from the opinion:

> "This Court is given the authority by Section 29, Article IX of our Constitution to exercise its own

independent, judgment as to both the law and the facts of an appeal involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of this State. Such assertion is made in this case. I reiterate that when it appears from the testimony that the producer has received over nine cents for his gas when he had only to receive seven and when under the plain terms of the contract the producer has retained for his own use and benefit certain elements of the gas from which he gets 45% of the total value of all the gas after it has been through the dehydration plant it is contrary to fundamental conceptions of justice to say that the buyer of the dehydrated gas shall pay 7¢ for the raw gas and not receive credit for the profit received from the other constituents of the gas. He did not intend to sell the hydrocarbons. The Corporation Commission was without authority to make a new contract for the parties."

It was also stated in the dissenting opinion:

"Neither the Constitution, Acts of our Legislature or any decision of this Court provide a penalty for purchasing residue or dehydrated gas at any price. Since the Commission has not provided for this situation by its orders, it cannot assess such a penalty after the taking. Such action on its part is clearly a violation of the due process clause of both the Federal and State Constitution."

V.

Jurisdiction

Natural, as plaintiff in error, instituted a proceeding for a review of the Panoma order in the Supreme Court of Oklahoma, the highest Court in the State in which a decision could be had. That Court, on September 15, 1953, handed down its opinion and entered judgment affirming

the the Commission's said order. Natural seasonably filed a petition for rehearing in the Court below, which petition was overruled by that Court on March 23, 1954. Natural's petition for appeal to the Supreme Court of the United States was allowed by the Chief Justice of the State Court on June ..., 1954.

The jurisdiction of the Supreme Court of the United States to review the decision of the Court below in this proceeding by direct appeal is conferred by Title 28, Section 1257 (2), United States Code. Appellant has challenged the validity, as applied to its activities, of certain orders of the Corporation Commission of the State of Oklahoma on the ground that they are repugnant to the Const'tution of the United States and the decision of the State Court is in favor of their validity. Such orders of a State regulatory body are "statutes" of the State within the meaning of Section 1257 (2) of the Code. *Williams* v. *Ruffy*, 96 U. S. 176, 183; *Lake Erie & Western Ry. Co.* v. *Public Utilities Com.*, 249 U. S. 422.

VI.

The Federal Questions Presented Are Substantial

1. *Interstate Commerce*

The contract of the parties clearly provides, as a matter of law, notwithstanding the statements in the majority opinion as to the point of sale, that Natural purchases residue gas at the outlet of a gasoline plant exclusively for immediate transportation in interstate commerce. The facilities of Natural were constructed *only* for that purpose. The contract was subject to the obtaining of certificates from the Federal Power Commission authorizing the construction of such facilities and such transportation.

Natural has no facilities for sales in Oklahoma and makes no sales in Oklahoma. When the residue gas enters Natural's meter station, the gas has been produced; it has been gathered to a central point; it has been processed through a gasoline plant; the liquefiable constituents have been separated and sold. The residue gas entering the meter station can go nowhere else, *physically or contractually*, from the point of purchase except to Natural's markets in Iowa, Nebraska, Illinois and Indiana.[4] The gas is not merely sold interstate. The sale is an integral part of interstate commerce itself.

The Recent Phillips Case

The opinion of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, No. 280 (decided June 7, 1954), 22 Law Week 4281, is conclusive of this question. The operations of Panoma as shown by the record in this case are exactly of the same character as are the operations of Phillips as shown by the record in that case. Phillips held leases covering many thousands of acres; so does Panoma. Phillips produced gas from those leases through its own wells; so does Panoma. Through extensive gathering systems owned by it, Phillips "gathered" the gas produced from its wells to its own gasoline plant; so does Panoma. Phillips "processed" the raw gas at its gasoline plants by separating the liquefiable constituents from the residue; so does Panoma. Phillips, at the outlets of its gasoline plants, sells its residue to Panhandle and to Michigan-Wisconsin exclusively for immediate transportation to other States; Panoma sells its residue at the outlet of its gasoline plant to Natural for immediate transportation to other States. Phillips' sales to Panhandle and those to Michigan-Wis-

[4] Cf. *Hughes Bros. Timber Co.* v. *Minn.*, 272 U.S. 469, 475-6 (1926).

consin are at wholesale; so are those from Panoma to Natural. Under a long line of authorities,[5] as pointed out by the Court of Appeals for the District of Columbia in *Wisconsin* v. *Phillips Petroleum Co.*, 205 F. 2d 706, 710:

"It follows that no State can regulate those sales."

Here the lack of power in the State to fix the price of gas sold for interstate transportation is reenforced by the fact that Congress, by the Natural Gas Act,[6] has provided a Federal authority to exercise that function; and even if the fixing of the price on such sales constituted only a regulation of a local activity affecting commerce (which it clearly is not), the procedure provided by that Act would negate any State power with respect thereto. Under this Court's opinion in *Phillips* v. *Wisconsin*, Panoma is a natural gas company. The Natural Gas Act provides that all rates and charges of any natural gas company shall be "just and reasonable" (15 U. S. C. 717c); the Federal Power Commission is vested with exclusive power to determine the reasonableness of such rates—if too high, the rate may be ordered reduced, and if too low the Commission may authorize an increase (15 U. S. C., Sec. 717d).

When prices on sales of a commodity in interstate commerce are to be regulated, the regulation affects the interest of those who live in consuming States and provide *an outlet for the commodity* (thereby giving value to the commodity), as well as the interest of those who produce the commodity, and authority for such regulation must be obtained from Congress which can consider the matter with impartial regard for the interests of the people of all

[5] *Public Utilities Com.* v. *Attleboro*, 273 U.S. 83 (1926); *U.S.* v. *Public Utilities Com.*, 345 U.S. 295 (1953); *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282; *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50 (1922); *Shafer* v. *Farmers Grain Co.*, 268 U.S. 189 (1925).

[6] 52 Stat. 821, as amended; 15 U.S.C., Sec. 717, et seq.

the States that are affected. *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189, 202. Since Congress has already provided a tribunal with power to exercise that function, such tribunal is vested with exclusive jurisdiction over the subject. *U. S.* v. *Public Utilities Com.*, 345 U. S. 295 (1953).

It is obvious that the Corporation Commission of the State of Oklahoma has, in disregard of the Commerce Clause, through the issuance of so-called minimum price orders, attempted to acquire jurisdiction on behalf of a producing State over the sale of gas in interstate commerce made at the outlet of a gasoline plant for immediate transportation in interstate commerce. Such a sale has been recently and conclusively held to be subject to the regulatory jurisdiction of the Federal Power Commission under the Natural Gas Act. The assertion of this jurisdiction by producing States contrary to law will, if sustained, result in an unfair and unauthorized levy on the citizens of the consuming States.

2. *Discrimination*

Beyond controversy, Panoma realizes gross from the constituents of its gas as produced 9.301¢ per thousand cubic feet. The Commission has required Natural to make an additional payment to Panoma of $1,334,960.50 because of 70,992,632 m.c.f. delivered to Natural's compressor station prior to the promulgation of the Panoma order, amounting to an additional 1.88¢ per m.c.f. Therefore, if the order against Natural should be permitted to stand, Panoma would receive from the constituents of its natural gas 11.181¢ per m.c.f.; and Panoma would continue to receive that price on future deliveries.

Yet the basic order fixes the price of the raw gas at only 7¢ at the wellhead, and the Commission in the Phillips order, interpreting its basic 7¢ order, held that Phil-

lips was complying with that order when it received from the constituents of its raw gas, sold separately, an aggregate realization of 6.9855¢.

The Commission in the Panoma order brushed aside the Phillips order, which interpreted the basic order, with the statement that such order was not entered as a fieldwide order, but was entered as affecting a part thereof only and on the application of an owner of a portion of the wells. Commenting on the Phillips order, the Commission added that it

> ". . . *does not feel it is bound* herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19,702."

All these observations are equally true of the Panoma order. It was not entered as a fieldwide order; and it was entered on the application of an owner of only a portion of the wells. It is directed solely at Natural. Since the Phillips order continued in effect, Panhandle, with the Commission's full approval, continued to purchase residue gas from Phillips at 4.1716¢ while Natural was required by the order to pay Panoma 7¢ per m.c.f. for natural gas. Phillips can produce its gas when selling all the constituents for 6.9855¢ but Panoma cannot produce its gas unless it obtains 11.181¢ per thousand cubic feet for the constituents of its gas! The full impact of this difference falls on Natural and its customers, and, in the final analysis, on the consumers of gas in Iowa, Nebraska, Illinois, Indiana and Wisconsin.

Since *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886), this Court has steadfastly held that when a law or State regulation, fair on its face and impartial in appearance, is so applied as practically to make unjust and unreasonable

distinctions between persons in similar circumstances, the denial of equal justice is within the prohibition of the Equal Protection Clause of the Fourteenth Amendment; that the purpose of the Equal Protection Clause is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute, or by its *improper execution through duly constituted agents, Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 352 (1917); that an actual discrimination in the application of a law "is as potential in creating a denial of equality of rights as a discrimination made by law"; and that equal protection of the laws may be denied by a State through the Legislature, through the courts or through its executive or administrative offices, in any of which events the action of the State violates the Equal Protection Clause of the Fourteenth Amendment, *Torrance* v. *Florida*, 188 U. S. 519, 521 (1903); *Rogers* v. *Alabama*, 192 U. S. 226, 231 (1904). In *East Coast Lumber Terminal* v. *Town of Lebanon* (2 Cir.), 174 F. 2d 106, 112 (1949), Judge Learned Hand, for the Court, stated:

> "It has indeed been the law for over sixty years" (citing *Yick Wo v. Hopkins*) "that the Amendment covers the unequal enforcement of valid laws, as well as any enforcement of invalid laws; . . ."

The State Court devotes much of its opinion to a discussion of the academic question of whether Panoma profits from the extraction of the liquid hydrocarbons from the natural gas before selling and delivering the residue to Natural. In that connection the Court makes the statement that in answering that question the processing cost to Panoma must necessarily include the cost of operating the gasoline plant "plus some contribution to the cost of constructing the plant or to depreciation, which is not in-

cluded in Natural's calculation and argument." The question of whether or not Panoma makes a profit is wholly immaterial. The amount received by Phillips from the liquid constituents was a gross price. Neither the Commission nor the Court gave any consideration to whether Phillips earned a profit from operating its natural gasoline plant. It is equally immaterial whether Panoma earned a profit from similar operations. However, the observation in the opinion that cost of operating the plant and depreciation was given no consideration in Natural's calculation and argument is in flagrant conflict with the undisputed evidence. Panoma's own auditor brought in an exhibit showing that after deducting all operating expenses incurred in gathering and processing, all general and administrative expenses applicable to the gathering system and the gasoline plant, and depreciation on the gathering system and gasoline plant ($622,366.07), Panoma still received *net* from the sale of all the constituents of its natural gas 7.04¢ per m.c.f.[7]

Not only does the Panoma order operate to prefer Panhandle in its purchases from Phillips and thus to discriminate against Natural in its purchases from Panoma; it operates to discriminate in favor of Panhandle's customers and to discriminate against Natural's customers, all of whom purchase in interstate commerce. The attempt to prefer the interstate commerce in residue gas of Panhandle to the interstate commerce in residue gas of Natural is an unlawful burden on Natural's such interstate commerce and violative of the Commerce Clause, as well as the Equal Protection Clause.

No more glaring example of discrimination and denial

[7] Thus, at the contract price, Panoma receives 9.301¢ gross and 7.04¢ net for the constituents of its gas. If the Panoma order is permitted to stand, Panoma will receive 11.181¢ gross and 8.92¢ net per m.c.f. for such constituents.

of equal protection in applying a statute or regulatory order has ever been presented to this Court.

3. *Due Process*

Not only does the order discriminate as against Natural as to future deliveries under its contract with Panoma; it denies Natural the right to purchase *any* gas under the contract except upon the condition that it pay to Panoma the sum of $1,334,960.50, imposed retroactively on Natural for deliveries of residue gas prior to the issuance of the Panoma order. The order operates to force Natural to hand over as a windfall to Panoma that sum of money or otherwise to lose its right to receive residue gas under its contract with Panoma. No such penal sanction has been imposed on any other purchaser.

Moreover, if it were true, as the State Court intimated, that Natural has purchased the gas in its natural form in place in the ground, the Commission would have no power, consistently with the Due Process Clause, to enter the Panoma order. The Commission has entered no general order fixing the price of natural gas in place in the formations underground. It has no more power to do that than it has to fix the selling price of a lease, or that of the land itself.

It is important to note also that the Commission had promulgated no general order by which it purported to fix the price of residue gas sold and delivered at the outlet of a gasoline plant; nor had it, prior to the Panoma order, entered any order dealing with natural gas delivered into temporary custody for a special purpose without sale. The dissenting members of the Court below, under these circumstances, properly insisted that the Panoma order was a violation of due process.

VII.

Manner in Which Federal Questions Were Raised

The Federal questions herein discussed were raised by Natural at the first opportunity. In its application filed with the Commission, Panoma did not contend that the basic order required payment of the wellhead price for gas delivered into custody for compression, nor did it contend that Natural purchased raw natural gas, either at the wellhead or in place in the ground. It merely alleged that since the entry of the basic order, Natural had continued to purchase "gas" from Panoma and had paid therefor a sum less than the price fixed by the Commission's order.

Natural, in its response to the application, set up the provisions of its contract with Panoma and alleged that if the basic order were interpreted as requiring Panoma to realize for the residue gas constituent of its gas the price fixed by the Commission in that order for natural gas at the wellhead, without allowance for the sums received by Panoma from the sale of other constituents of the gas, or if, under the circumstances, the Commission should require that Panoma cease to deliver residue gas to Natural under the contract, the order would be violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Commerce Clause of the Constitution of the United States.

In the petition in error filed by Natural in the Supreme Court of Oklahoma, Natural alleged that the Panoma order unreasonably discriminated against Natural by applying to it a different rule from that applied in the Phillips order while still adhering to the latter as a correct interpretation of the basic order; that the Panoma order denied to Natural the equal protection of the law and deprived Natural of its property without due process of law, in violation of

the Fourteenth Amendment and constituted a regulation of and imposition of a burden on interstate commerce in violation of the Commerce Clause.

The state court, in its opinion, treated the contract between Panoma and Natural as constituting a sale of natural gas to Natural either at the wellhead or in place in the ground. Having done so, the court evaded a discussion of any of the constitutional questions raised by Natural, except by the brief reference made to the Commerce Clause and a summary rejection of the constitutional questions raised. The four members of the court who concurred in the dissenting opinion recognized that, under a proper interpretation of the contract, the questions of equal protection and due process were also present in the case.

Natural, in the petition for rehearing filed in the state court, urged that the majority opinion was based on the erroneous assumption that natural (raw) gas was delivered by Panoma to Natural at the wells; that the court disregarded positive and undisputed proof that Panoma from the utilization and sale of its gas realized 7.04¢ per m.c.f. after allowance for all direct costs and depreciation.

The state court cannot deprive Natural of the right to a determination by this Court of the serious constitutional questions here involved by holding, notwithstanding the undisputed evidence to the contrary, that Natural's purchase is of raw natural gas at the well or in the ground. Nor can it defeat Natural's constitutional rights by failure to discuss constitutional questions presented to it and the basic questions of fact on which constitutional rights are asserted. *Ancient Egyptian Arabic Order* v. *Michaux*, 279 U. S. 745 (1928).

VIII.

The State Court's Interpretation of the Contract Is "Manifestly Wrong"

The state court obviously recognized the fallacy of the Commission's holding that the basic order imposed on Natural an obligation to pay Panoma 7¢ for the wellhead gas because of the circumstance that, after being gathered, that gas was delivered temporarily into Natural's "custody" (a bailment only) for compression and return to Panoma prior to the extraction by Panoma of the constituents of the gas that had been "reserved" by Panoma. The court also must have recognized that the basic order applied only to the wellhead price of raw gas, not to the price of the residue constituent thereof sold at the outlets of gasoline plants; that even if the basic order had operated to fix the price of residue sold at the outlets of gasoline plants, it would be violative of the Commerce Clause if applied to a sale such as that from Panoma to Natural, made for immediate transportation to other states, and, therefore, part of the integral process of interstate commerce itself; that it would be discriminatory as applied to Natural; and that it would operate to take Natural's property without due process of law.

The opinion of the majority of the state court can be explained only by the assumption that it made a studied attempt to avoid the impact of the Commerce Clause, the Equal Protection Clause and the Due Process Clause by distorting the contract provisions in an effort to place Natural's purchase either at the wellhead or in place in the ground, notwithstanding express provisions of the contract to the contrary.

The extremity to which the majority went is illustrated by the statement that

> "These contract provisions tend strongly to support the Commission's finding and to indicate that in truth Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought."

The Commission made no such finding and arrived at no such conclusion.

The majority also stated that the contract in substance provides that

> "Seller should deliver the gas direct from the wells to Natural's initial or primary pipe."

Such statement is contrary to the undisputed facts. Natural owns no pipe, initial, primary or otherwise, between the wells and the compressor station. Many of Panoma's wells were as much as 15 or more miles distant from the compressor station and the gasoline plant. Under the contract, Panoma obligated itself to produce the raw gas, gather it and deliver it to Natural's compressor station. It is undisputed that it did so.

Not only did the state court ignore or distort the contract provisions, but it placed a construction on the contract which is in direct conflict with that placed upon substantially identical contracts by the parties thereto and by this Court.[8]

The contract itself is clear and unambiguous. It expressly provides that title to the residue gas shall pass to

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[8] *Michigan-Wisconsin* v. *Calvert*, 345 U.S. 157; *Phillips Petroleum Co.* v. *Wisconsin*, 22 Law Week 4281.

Natural at its metering station located at the outlet of Panoma's gasoline plant which is at the inlet of Natural's interstate transmission system. As a matter of law, the contract must be construed as providing for a sale of only the residue gas by Panoma to Natural at that point.

It is clear from the contract that at the time of the sale and delivery of the residue gas Panoma had performed all of the functions of producing, gathering, and processing the raw gas for the removal of the liquefiable constituents therefrom, which constituents under the terms of the contract Panoma had expressly reserved from the sale to Natural. The uncontradicted evidence shows that the parties to the contract so construed it, and both performed the contractual obligations in good faith on that basis. Harrington, the President of Panoma, testified that Panoma sold Natural only the residue gas; that the gas belonged to Panoma until it passed through the latter's gasoline plant; and that the meter station at the intake of Natural's pipeline system was the point of sale at which the title passed. The wholly arbitrary construction of the contract by the Commission and the state court for the obvious purpose of depriving Natural of its constitutional rights is in no wise binding on this Court.

When substantial constitutional rights are asserted, whether under the Equal Protection Clause, the Due Process Clause, the Commerce Clause, or any other provision of the Constitution, this Court will, of course, exercise its own judgment as to the facts and the law. *Hoover & Allison Co.* v. *Evatt*, 324 U. S. 652, 659 (1945); *Williams* v. *N. Carolina*, 325 U. S. 226, 236 (1945); *Norris* v. *Alabama*, 294 U. S. 587, 590 (1935). When the holdings of a state court are based on an interpretation of a contract, this Court will interpret the contract to see if the decision rests on a fair or substantial basis. Constitutional rights can-

not be destroyed by evasive misinterpretation. *Broad River Power Co.* v. *S. Carolina*, 281 U. S. 537, 540 (1930); *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, 654 (1942). And, while this Court will be inclined to accept an interpretation of a contract by a state court if it is a reasonable one, that interpretation will be rejected if it is "manifestly wrong." *Southern Wisconsin Ry. Co.* v. *Madison*, 240 U. S. 457, 461 (1916); *N. Y. Transit Co.* v. *N. Y.*, 303 U. S. 573, 593 (1938).

Four members of the state court in the dissenting opinion correctly stated that the majority opinion is *wrong;* that Panoma was not selling raw gas at the well but was selling only residue gas at the meter station.

Conclusion

Appellant respectfully submits that enough has been presented to demonstrate that this appeal brings before this Court questions under the Federal Constitution that are far-reaching and important, both in terms of legal principles and of economic impact upon the consumers of gas throughout the nation. The opinion of the state court is in irreconcilable conflict with a long line of decisions by this Court, including the recent decisions in *Michigan-Wisconsin* v. *Calvert*, 347 U. S. 157, and *Phillips Petroleum Co.* v. *State of Wisconsin, et al.*, decided June 7, 1954, 22 Law Week 4281. If the judgment of the state court is sustained, the effect will be a discrimination in application of the Commerce Clause as between natural gas companies in exactly the same circumstances. Under identical facts, the prices for gas sold by Panoma to Natural would be fixed by the Corporation Commission of the State of Oklahoma while the prices charged Panhandle by Phillips would be regulated by the Federal Power Commission under the Natural Gas Act. Such a result might provide

a means whereby other gas producting States may avoid the jurisdiction of the Federal Power Commission over the sales in interstate commerce of gas by natural gas companies. Such a situation is unthinkable.

Is it possible, notwithstanding the holdings of this Court on June 7, 1954, that the Federal Power Commission can be ousted of its exclusive jurisdiction to fix the price on residue gas sold at the outlet of a gasoline plant for immediate transportation in interstate commerce through the use by a producing state of a minimum price fixing order as is attempted in this case?

Appellant urges the Court to make it clear that producing states' minimum price orders cannot supersede the jurisdiction of the Federal Power Commission in regulating the price of residue gas sold under the circumstances here present. This issue can never be presented more clearly than in this case.

Respectfully submitted,

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Coleman Hayes,
Clarence H. Ross,
Charles C. McDugald,
Warren T. Spies,
S. A. L. Morgan,
Counsel for Appellant.

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

NATURAL GAS PIPE LINE COMPANY OF AMERICA,
Plaintiff in Error,

vs.

PANOMA CORPORATION and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Defendants in Error.

SYLLABUS

1. The grant of power to the Corporation Commission under 52 O. S. 1941, § 239 to regulate the taking of natural gas from a common source of supply "so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom", by necessary implication includes the power to employ such means as may be reasonably necessary to the accomplishment of the declared purposes, and includes the power to fix a price consideration in the taking of gas when found necessary to the attainment of such ends.

2. The provisions of 52 O. S. 1941, § 233, give the Corporation Commission authority to fix the price at which natural gas may be produced and taken from the field, under the circumstances and in the manner therein stated.

3. When the Corporation Commission by valid order fixes the minimum wellhead price which must be paid for natural gas taken from a designated gas field or gas pool, that order supersedes any existing contract by which a purchaser is taking natural gas from such gas field or gas pool at a lesser price; and from and after the effective date of such order such purchaser owes a legal duty to pay for all gas taken, as much as the minimum price fixed by such order.

4. When, upon proper hearing, the Corporation Commission finds that a natural gas purchaser is taking natural gas from the producer at less than the minimum wellhead price fixed by valid order of the Corporation Commission, then the Commission may order that such purchaser pay at least as much as the fixed minimum price for all gas thereafter taken, with provision that if such purchaser fails to so pay for such gas that such purchaser must cease taking gas from such gas field; and this rule applies even in case the gas purchaser is taking gas under an existing written contract executed prior to the Commission's price fixing order, which contract fixed the purchase price at less than the minimum fixed by the order.

5. When upon proper hearing the Corporation Commission finds that a purchaser of natural gas from a gas field or gas pool covered by price fixing order has taken gas therefrom and paid therefor a price or sum less than the legal minimum price, then the Corporation Commission may ascertain the amount of gas so taken at such lesser price and may ascertain the balance necessary for such purchaser to pay as a "back pay" sum to bring such purchaser into full compliance with the price fixing order by paying for all such gas a sum and price equal to the minimum price established by the price fixing order.

6. When the Corporation Commission has properly determined the amount of a "back pay" sum legally due to be paid by a natural gas purchaser, to constitute compliance with a valid order fixing a minimum price, the Corporation Commission may direct that such sum paid, with provision that if such payment is not made the said purchaser shall cease to take gas from such gas field or gas reservoir, and such an order does not constitute the rendering of a money judgment beyond jurisdiction.

7. Orders of the State Corporation Commission in administering and enforcing compliance with a valid order fixing minimum wellhead price of natural gas produced in a certain field in Oklahoma, did not constitute an undue interference with Interstate Commerce and such orders are not violative of the Commerce Clause of the Federal Constitution though such natural gas after production and

compression and further processing is to go into purchaser's pipeline system for transportation to other states for final sale to consumers.

8. Record examined, and held, that the findings of the Corporation Commission that the purchaser here involved was a purchaser of natural gas from the named gas pool or gas reservoir, and that such purchaser had taken and was taking gas from such reservoir at less than the minimum purchase price theretofore fixed by valid order, are all sustained by the evidence and by the stipulation of the parties.

Application to the Corporation Commission by Panoma in connection with taking of natural gas from certain leases in Texas County, by Panoma, and sold to Natural. From the order made thereon Natural appeals.

AFFIRMED

For Plaintiff in Error: S. A. L. Morgan, D. H. Culton, Warren T. Spies, and Coleman Hayes, of Okla. City, Okla.

For Defendant in Error, Panoma Corporation: Robinson, Shipp, Robertson & Barnes, Richardson, Shartel & Cochran, Blakely Murphy, all of Okla. City, Okla.

For Corporation Commission: Floyd Green, Ferrill Rogers, both of Oklahoma City, Okla.

WELCH, *J.*

The Panoma Corporation owns extensive oil and gas leases in the Guymon-Hugoton gas field in Texas County, Oklahoma. Gas in large quantities is taken therefrom daily pursuant to a contract between Panoma and The Natural Gas Pipeline Company of America.

This contract was made and this gas taking began before the State Corporation Commission by its orders Nos. 19514 and 19515 fixed the price at not less than 7¢ per thousand cubic feet at the wellhead for all natural gas taken from the producing structures or formations of said gas field.

Those orders were upheld by the Supreme Court of Oklahoma and by the Supreme Court of the United States

in 1950. *Cities Service Gas Company* v. *Peerless Oil & Gas Co., et al.*, 203 Okla. 35, 220 P. 2d 279. *Cities Service Gas Company* v. *Peerless Oil & Gas Company, Corporation Commission of Oklahoma, et al.*, 340 U. S. 179, 95 L. Ed. 156. Thus, since the effective date of the aforesaid orders, January, 1947, no one could legally take natural gas from that field at a price less than 7¢ at the wellhead.

The authority of the state in the exercise of its police power to regulate the taking of natural gas is well settled. See *Julian* v. *Capshaw* (1930), 145 Okla. 237, 292 P. 841; *Wilcox Oil & Gas Co.* v. *State* (1933), 162 Okla. 89, 19 P. 2d 347; *Sterling Refining Co.* v. *Walker* (1933), 165 Okla. 45, 25 P. 2d 312; *Russell* v. *Walker* (1932), 160 Okla. 145, 15 P. 2d 114; *Patterson* v. *Stanolind Oil & Gas Co.* (1938), 182 Okla. 155, 77 P. 2d 83; (appeal dismissed, 35 U. S. 376, 83 L. Ed. 231); *Croxton* v. *State* (1939), 186 Okla. 249, 97 P. 2d 11; *Denver Producing & Refining Co.* v. *State* (1947), 199 Okla. 171, 184 P. 2d 961; *Quinton Relief Oil & Gas Co.* v. *Corp. Comm. of Oklahoma* (1924), 101 Okla. 164, 224 P. 156, and *Cities Service Gas Co.* v. *Peerless Oil & Gas Co., et al.* (1950), 203 Okla. 35, 220 P. 2d 279.

The contracted price Natural was to pay Panoma for gas taken under the contract was less than 7¢, but the contract was definitely subject to any valid order of the Corporation Commission. The contract in Article Fourteenth provided that:

> "This contract is subject to present and future valid laws and present and future lawful orders of all regulatory bodies now or hereafter having jurisdiction over the parties; and should at any time during the term of this contract either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the other provisions hereof, continue nevertheless, but shall then be deemed modified to conform with the requirements of such law or regulation."

See also, the following language of this Court in *State* v. *Waterfield*, 167 Okla. 209, 214, 29 P. 2d 24, 29:

> "Thus it may be seen that changes in the obligations of contracts may be made when made as a proper exercise of the police power, not because constitutions may be suspended by police power, but because the right to legislate in the exercise of that power is a part of the existing law of the state at the time of the execution of the contract; and as such enters into the terms and provisions of the contract in the same manner that statutes prescribing procedure become a part of the contract.
>
> "It may be said that all property rights including contracts are subject to the proper exercise of the police power, and in that respect it is often said that individual rights to property being subject to the exercise of this power are qualified as distinguished from absolute."

See, also, *Home Building & Loan Ass'n.* v. *Blaisdell* (1933), 290 U. S. 398, 78 L. Ed. 413, 54 S. Ct. 231.

So in 1951, after the aforesaid Price Order of Commission had been fully sustained, Panoma, after demand, made this application to Commission to require Natural to comply with said order to pay a wellhead price of 7¢ for gas taken and to be taken by Natural from Panoma's leases in said field in Texas County.

Natural responded, in substance, that by reason of the terms of the contract Commission's price order was not applicable to the gas taken by Natural; and that if proper analysis be made there was no violation of the price order in the taking of gas from this field by Panoma and Natural because such taking under the contract resulted in an aggregate or gross return to Panoma equal to a wellhead price of 7¢ or more.

Upon trial Commission made its findings and entered its order. Commission found, among other things, 1, that since the effective date of the price order January 1, 1947, no one could legally take gas from this field at a price less

than 7¢ per thousand cubic feet; 2, that the uncertainty as to the finality of that order, created by the appeal therefrom to the Supreme Court of Oklahoma, and the Supreme Court of the United States, justified Panoma in delivering gas from these leases to Natural without regard to said price order, or at less than the minimum price under the contract until said order was finally affirmed; 3, that nevertheless the taking of gas from the structure and formation in these leases at a price less than 7¢ at the wellhead was illegal; 4, that Natural should pay to Panoma the difference between the lesser amount actually paid for gas taken before June 1st, 1951, and the sum or price due at 7¢ for each thousand cubic feet; 5, that the actual amount of gas so taken from the leases was stipulated and was determined in accordance with such stipulation; 6, that therefore Natural should in twenty days pay the sum due Panoma; 7, that strict enforcement of the price order was necessary for the prevention of waste; 8, that the contract between Panoma and Natural could not impair or defeat the effect of the order; 9, that the acceptance of the contract contention would cause and invite discrimination and general breakdown of the regulation preventing waste, etc.

Commission ordered in effect that Natural should pay for all gas received on and after January 1, 1951, at the sum and rate of 7¢ per thousand cubic feet at the wellhead. Commission further ordered that Natural should pay to Panoma a "back-pay" sum sufficient to equal 7¢ per thousand cubic feet for all gas taken by Natural prior to January 1, 1951, at a lesser price.

Commission further ordered that if Natural should fail after 20 days to pay such "back-pay" sum to Panoma, or should fail to pay as much as 7¢ wellhead price for gas taken after January 1st, 1951, that Panoma should cease any delivery of gas to Natural.

On this appeal Natural contends as upon its response below, with the further contention that Commission's "back-pay" order has the effect of a money judgment which Commission was not authorized to enter.

Natural's contention that Commission's price order was not applicable to the gas taken by Natural was based on

Natural's construction of the contract to be a purchase of only a part of the natural gas taken from Panoma's leases. Since Commission did not agree with that construction we must refer to some of the details of the contract, but we deem it not necessary to quote all of the contract of many pages.

As items of background the contract shows that Natural owns an extensive pipeline system by which it transports gas from Texas and Oklahoma to consumers in the Chicago metropolitan area and elsewhere; that with contemplated expansions the system will require on maximum days up to three hundred forty (340,000,000) million cubic feet of gas per day; that Natural desires to purchase from seller (Panoma) as a part of its system needs, a daily average of seventy-six (76,000,000) million feet of gas; that seller owned gas rights in more than seventy-eight thousand (78,000) acres of land in the Guymon-Hugoton field, described by legal description of each tract of land in the contract, and that seller desires (quoted from contract) "to produce the gas underlying said gas reserves and to sell the same to Natural. They have completed a number of gas wells and propose to drill additional gas wells thereon, construct gathering lines connecting such wells * * * and install all other necessary facilities and appurtenances, and to operate the same; all for the purpose of delivering gas to Natural under the terms of this contract."

We should here observe that the rough gas as it comes from the well is not suited to transportation in Natural's pipeline, and that the gas must go through a refining or cleaning or improving process before Natural can transport it and sell it to its ultimate consumers. It is essential that such processing be done before the gas is finally taken into Natural's pipeline. That item was considered in the contract and the plan was set out in substance as follows: Seller should deliver the gas direct from the wells to Natural's initial or primary pipe. Natural would then pass it into its own compressor station on or near the seller's premises where Natural would compress the gas, thence it would in turn pass the gas to a processing plant to be constructed and operated by seller.

Panoma was definitely obligated to construct said plant at a cost of several million dollars, and to efficiently operate it and to process the gas through such plant so as to deliver the gas back to Natural into its pipeline system in a carefully specified condition. When the gas was thus returned to Natural it was to be metered and that measurement was the basis of payment by Natural to Panoma, with provision that title passed to Natural at that point. There was provision in detail as to the operation of this processing plant by Panoma, and in case of failure of Panoma to properly and efficiently operate the plant, Natural had the right to take over such plant and add any needed equipment and operate the plant for seller, all at seller's expense, plus 10% supervising charge, and keep custody and operation of the plant until sellers could give satisfactory assurance as to future operation by sellers.

In processing the gas from Natural's compression station or plant through seller's processing plant the seller was to remove certain detailed constituents of the rough gas including water and a sufficient portion of the hydrocarbons so as to produce a certain specified condition in the gas and so as to prevent the formation of hydrates and/or the condensation of hydrocarbons in Natural's pipeline system. But seller was prohibited from removing hydrocarbons to the extent of reducing the heating value of the gas below a fixed figure.

All constituents so removed from the rough gas which had any value was to be kept by sellers as their own property, or for sale by them for their own account.

The contract provided that it was contemplated by the parties that all of the gas underlying seller's reserves of 78,000 acres would be required to fulfill this sale contract, and that all such gas was reserved for deliveries under this contract, and that all of the entire gas reserve was dedicated to the purpose of this sale contract, and none of such gas under the entire area should be sold to any other person. To this last provision there were minor exceptions including or preserving the rights of landowner—lessors to have gas for domestic usage, and the right of sellers to

use gas required for operation of the leaseholds, but we regard those items as being immaterial here.

Natural places great emphasis on part of these contract provisions and argues that in fact it did not purchase from Panoma all of the gas produced from the wells and first delivered to Natural to enter its compressor. Natural contends that since Panoma thereafter extracted part of the constituents of the rough gas that Natural bought only a part or portion of the whole gas, and much emphasis is placed on the provision that it is only the gas in its final purified form which was metered and title passed to Natural which Natural bought, and in that manner took from the gas wells. Natural contends, and the proof shows, that Panoma marketed certain of the extracted constituents from the gas and that Panoma received substantial sums therefor. In final analysis it is the contention of Natural that the sum it paid to Panoma for the gas taken into its pipeline plus the gross amount received by Panoma for the sale of extracted ingredients amounted to as much or more than 7¢ for each cubic feet of natural gas taken from the wells, and that therefore the taking from the gas reservoir was not in violation of Commission's price order.

This calculation by Natural would add the gross sum received by Panoma for all sales of extracted ingredients as if the gross sum amounted to a payment to Panoma on or for the wellhead gas. That calculation, however, overlooks these facts: (1) that such payments to Panoma are more in the nature of payments for manufactured commodities than payments for natural gas, (2) that no account is taken of the great cost of building, maintaining and operating the expensive plant required in the process and required by the contract; (3) that, as between Panoma and Natural, Panoma has earned the value of these extracted ingredients by treating or processing Natural's gas to bring it to the precise condition required by Natural in its business, and specifically required by the contract, (4), the well known fluctuation in market price of such commodities which would result in Panoma operating its plant at different times at more or less profit, or more or less loss.

This contention by Natural does not take into consideration any part of the cost of the processing operation. In order to determine whether the value of the extracted ingredients exceeded the processing expense, or whether Panoma made a profit on the processing operation, the calculation must necessarily include the cost of operating its processing plant plus some contribution to the cost of construction of the plant, or to depreciation, which is not included in Natural's calculation and argument.

Furthermore, this contention by Natural does not give sufficient emphasis to the contract provision that Panoma must construct and operate the plant, whether profit or loss is realized from the sale of the extracted constituents of the rough gas.

Panoma contends, and there is evidence to support it, that proper calculation of the operating cost of processing the gas, with proper charge for depreciation of the plant, or proper cost amortization, with maintenance and replacement costs, would result in showing a loss, or little if any profit at all, and might very well at different periods show an actual loss; that in any event the amount of profit or loss would fluctuate over varying periods, and could not enter into such a calculation as that proposed by Natural, because it would result in different calculations over varying periods, and would result in Natural's paying one price in one period to bring the aggregate up to 7*c* and a different price over a different period to bring such aggregate up to 7*c*. Thus Panoma points out that Natural would be operating upon a different pay basis for each month, or for each quarter or for each semi-annual or annual period. And Panoma takes the view that Natural in effect and in fact is the purchaser of natural gas from the gas wells and not merely a purchaser of part only of the gas produced.

We think a consideration of all of the provisions of the sale contract is necessary to decide this controlling question. We think the narrow view of Natural was properly denied by Commission. It seems well demonstrated by the overall plan that Natural, if not in fact purchasing all of the gas located in Panoma's gas reserve, was at least pur-

chasing all of the gas actually produced and run into the primary line of Natural and thence to its compressor station. The temporary return of the gas to Panoma after Natural had compressed it was a custody or possession for a particular purpose, that is, to clean up or purify or process the rough gas for one purpose only, and that was to redeliver the gas in a stipulated condition to Natural. This processing may or may not have resulted in a profit to Panoma in the future. Nevertheless, that processing must be performed by Panoma. It is essential to Natural that it be done. The contract so provides, and in addition thereto the contract authorized Natural, in the event of unsatisfactory operation by Panoma, to take over the plant and operate it at the cost of Panoma plus 10% management expense.

Panoma produced the rough gas and delivered it to Natural. Thereafter when Panoma received back the gas and processed it and redelivered it to Natural, we regard that as merely a detail of the overall plan of processing the gas in selling and delivering it to Natural. We notice the fact that it was metered on this second delivery and that the expression was used that title passed at that point, but we do not consider that in any sense controlling, if it is even material in deciding the controlling question.

We deem it fair to assume, as apparently Commission assumed, that as between the contracting parties the recovery by Panoma of any salable products was to balance or offset the overall cost to Panoma of carrying out its obligation to Natural to place Natural's gas in proper condition to enter Natural's pipeline system and proceed to the burner tips of Natural's customers, with any loss in the processing to be suffered by Panoma, and any profit therein to offset the hazard of a loss, or the profit or chance of profit over one period to offset the loss or chance of loss during another period. Thus a similar situation would be created as if Natural, after first receiving the gas and compressing it, had employed or contracted with some other person to process its gas in exchange for the value of the extracted ingredients necessary to put the gas in the required condition for ultimate use by Natural.

The contract provides that Panoma desires to sell Natural all the gas underlying its entire gas reserves; and that Panoma had completed a number of gas wells and will drill additional wells and install gathering lines, etc., and operate the entire production, all for the purpose of delivering gas to Natural; and that it is contemplated by both parties that all the gas underlying Panoma's acreage will be necessary to cover Natural's requirements and to fulfill the sale contract; and that all of the entire gas production of Panoma is reserved for deliveries under the contract; and that all of Panoma's gas reserve is dedicated to the purpose of this sale contract; and that none of such gas shall be marketed to any other person; and reference is made to Natural's lien of dedication on Panoma's leaseholds themselves.

These contract provisions tend strongly to support Commission's findings and to indicate that in truth and in fact Natural bought and contracted to buy all of Panoma's natural gas in the ground and to be produced from under this 78,000 acres, and that all provisions for drilling, producing, piping, compressing, processing, metering, etc., were merely details of delivery to Natural of that which it had already bought.

We therefore agree with the conclusion of Commission that Natural purchased and took natural gas from this reservoir at less than 7¢ per thousand cubic feet wellhead price. The extent thereof was in the amount stipulated and therefore found by Commission.

There was some contention on the part of Natural that it did not take "natural gas" from the structures and formations of the Guymon-Hugoton field because the gas it finally took and paid for was not in fact "natural gas". This contention was based on the facts above set out. No authority is cited to sustain the conclusion that natural gas produced from the earth and transported to consumers who use and burn it as such, is changed into something different because of the fact that after it is taken from the well it is cleaned up and processed before final delivery to the ultimate consumer. Furthermore, the contract specifically provides that "the term 'gas' wherever used here-

in, shall mean natural gas;" with further statement which makes the word "herein" refer to all provisions of the comprehensive contract.

On this overall contention Natural cites *Phillips Petroleum Co.* v. *State*, included by consolidation with *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 203 Okla. 35, 220 P. 2d 279. We have considered that cited authority, but do not find anything therein which might in any manner support the position and contention of Natural in this case. We deem it not necessary to further discuss the *Phillips* case.

In this case Natural was not a producer of natural gas, but it was a purchaser of natural gas produced by Panoma. The question here is whether Natural paid the necessary 7¢ per thousand cubic feet wellhead price. If Natural paid Panoma less than the proper 7¢ wellhead price, then there was a violation of the price order which was made and became effective after the contract was made, and the price order would govern and control over the contract price of less than 7¢. Upon that point, as above stated, we have approved the conclusion of the Commission.

Natural next contends that the order of Commission requiring Natural to pay to Panoma the "back pay" sum on all gas taken before January 1, 1951, amounted to a judgment for that sum of money in favor of Natural and against Panoma, and that the Corporation Commission was not authorized to enter any such money judgment.

We do not agree that the order of Commission was in any sense the rendition of a money judgment against Natural. It was merely a calculation and statement of the amount Natural should have paid for the gas taken before January 1, 1951, to comply with the price fixing order. There was no controversy as to the contract between the parties, nor as to the amount of gas Natural had received from the wells of Panoma, nor as to the amount Natural had paid on the purchase price thereof. By express provision of the contract, as well as by law, the contract was modified by the price order and the minimum wellhead price of 7¢ became a part thereof and Natural was obligated by law to pay that price of 7¢. The calculation and

statement of this "back pay" sum by Commission was merely a statement of the further sum Natural should pay to bring itself in full compliance with the minimum price requirement. Commission could not enforce it as a money judgment, however, this does not mean that Commission is without any power to enforce compliance with its valid price fixing order. As in case of any other valid order, Commission may require compliance therewith by any other order within its authority, so in this case, while Commission could not require Natural to pay this sum, it could prohibit Natural from taking further gas until it brought itself into compliance with the effective price order by making the payment. If it were otherwise Commission would be powerless to take any steps to require compliance with its valid orders in the highly important program of conservation, and might as well not make them.

We hold that the order as to this "back pay" sum was within the authority of Commission. This conclusion finds support in our statements in Cities Service, *supra*.

Natural further contends that the orders here involved constitute an undue interference with Interstate Commerce, and that such orders are violative of the Commerce Clause of the Federal Constitution.

We deny that contention on the authority of *Cities Service* case, *supra*. In that case it was contended that the action of the Corporation Commission in making and enforcing the specific wellhead price orders now involved in this case would so violate the Federal Constitution.

Speaking on that point the Supreme Court of the United States said: (95 L. Ed. 161-162)

> "The Commerce Clause gives to Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. (Citing authorities.) It is now well settled that a state may regulate matters of local concern over which Federal authority has not been exercised, even though the regulation has some impact on interstate commerce. (Citing authorities.) The only

requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. Nor should we lightly translate the quiescence of Federal power into an affirmation that the national interest lies in complete freedom from regulation. (Citing authorities.)

"That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation. (Citing authorities.)

"We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. Some industrial consumers, who get bargain rates on gas for 'inferior' uses, may suffer. But strong arguments have been made that the national interest lies in preserving this limited resource for domestic and industrial uses for which natural gas has no completely satisfactory substitute. (Citing authorities.) Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of

this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause. (Citing authorities.)"

Since the Corporation Commission had authority to make price fixing orders without violating the Federal constitution, then further orders within its authority designed to enforce compliance with such orders would likewise involve no violation of the Federal constitution. To hold otherwise would bring about the result that the Corporation could and did make this specific price fixing order as applied to the Guymon-Hugoton field and the making of the order was not in violation of the Federal Constitution, but that subsequent valid orders directing compliance with the price fixing order would so violate the Federal Constitution. Such a conclusion, to say the least of it, would be most peculiar and quite illogical. Therefore, and upon the foregoing authorities we find no merit in this contention.

The orders appealed from are affirmed.

JOHNSON, V. C., *J.*, and CORN, DAVISON and ARNOLD, *JJ.*, concur.

HALLEY, C. *J.*, and O'NEAL, WILLIAMS and BLACKBIRD, *JJ.*, dissent.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35,203

NATURAL GAS PIPE LINE COMPANY OF AMERICA,
Plaintiff in Error,

vs.

PANOMA CORPORATION and THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Defendants in Error.

HALLEY, C., *J.* (dissenting):

The majority opinion is affirming the Corporation Commission in this case is wrong. I am compelled to express a dissent.

On December 1, 1946, Natural Gas Pipe Line Company of America entered into a contract with D. D. Harrington and others who comprised a partnership doing business under the firm name of Harrington and Marsh. Panoma Corporation acquired all the interest of the partnership in the contract.

Under the contract Natural was to purchase gas from the partnership and pay for it until the first day of July, 1951 at six cents (6¢) per thousand cubic feet. The unit volume for the measurement of gas delivered under the contract was one cubic foot of gas at a base temperature of sixty degrees Fahrenheit (60° F.) and at an absolute pressure of sixteen and four-tenths (16.4) pounds per square inch.

Panoma began the delivery of gas to Natural in August, 1948. This gas was paid for at a price basis of 5.12 cents per thousand cubic feet in accordance with the base provided by the Corporation Commission. From August 1948 to the end of 1950 Panoma received from Natural $3,634,523.74.

On December 9, 1946, the Corporation Commission issued an order which is as follows:

> "1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price, at the wellhead of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.
>
> 2. This order shall be effective as of January 1, 1947."

Not until January 30, 1951, did Panoma take any action in regard to this matter when it filed an application with the Corporation Commission for a hearing. As a result the hearings had on this application the Corporation Commission made an order that Natural pay Panoma the difference between the amount it had heretofore paid for such gas delivered to it by Panoma and the amount which the Commission said it should have paid for the gas herein determined, computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute and if Natural did not pay it Panoma should stop delivering gas to Natural. From this order Natural properly appealed.

The evidence taken at the hearing showed that Panoma had received from the sale of extracted liquids the sum of $2,968,405.33 in the period August 1948 to December 31, 1951. With the $3,634,523.74 received over the same period from Natural and the amount received from sale of liquids Panoma was paid a total of $6,602,929.07 or $.09301 per thousand cubic feet on 14.65 pressure base for all the gas disposed of.

The order of December 9, 1946 fixing the price that should be paid at the wellhead was made as if the producer of the gas was selling at the wellhead. In the instant case the producer, Panoma, was not selling at the wellhead.

At no time did Natural buy the raw gas (spoken of in the majority opinion as rough gas at the wellhead). The contract stated that title to the gas passed to Natural at

the meter station and at this point the hydrocarbons had been extracted.

The contract in Section One, Article V, specifically provided that Panoma reserved the right to extract from the gas nitrogen, helium, natural gasoline, propane and other hydrocarbons other than methane, together with any methane necessarily removed from the gas in the process of recovering such other constituents.

The Corporation Commission only has the right to fix the price of gas as a conservation measure under the theory that if no price is fixed that the gas might be consumed in producing cheaper products and full benefit would not be received from the gas. We held that this right was given by implication in the 1915 Conservation Act, *Cities Service Gas Company* v. *Peerless Oil and Gas Company, et al.,* 203 Okla. 35, 220 P. 2d 279. The order did not attempt to guarantee the producer a profit of 7¢ a thousand and it had no right to attempt to do so. It only said it should not be sold for less than 7¢ per thousand at the wellhead. In my opinion under the evidence and the order of the Commission, Panoma received more than the 7¢ required and for that reason Natural owes Panoma nothing. There was no evidence that there was any waste in the use to which this gas was put.

If Natural is to be charged with the payment of 7¢ per thousand for gas at the wellhead then it should be credited with everything that was taken out of the gas as if it was done before it reached the wellhead since Natural only received dehydrated gas. It is no concern of the Corporation Commission as to what price is paid the producer. Their concern is with conservation and to see that the gas is not used in a manner whereby a natural resource would be dissipated without the State receiving the proper benefit.

This Court should not say that a purchaser of dehydrated gas which has constituents extracted to the extent of 45% of the value of the whole should be burdened with paying a fixed wellhead price without receiving any credit for the by-products. The order of the Corporation Commission of December 9, 1946 was not made with the contract in this case in mind. Neither was the contract written

with such an order in mind. The order and contract must be considered with the point in mind that the Commission was not guaranteeing a profit to the producer but was endeavoring so as to conserve the gas in this State in this particular area.

I am also of the opinion that the Corporation Commission had no authority to tell Panoma that it must not furnish Natural any more gas unless Natural paid them this $1,300,000. This was a matter for the courts. Our Constitution and Statutes at no place provide for the Corporation Commission taking the action it has in this case by saying to a purchaser of the gas you pay the producer $1,334,960.50 or else the source of supply of gas for many of your customers will be chopped off. The Natural had a binding contract with Panoma through its predecessors and that contract should be interpreted by the courts and not by a regulatory body. In *Southwestern Light and Power Company* v. *Elk City*, 188 Okla. 450, 111 P. 2d 820, we said that the Corporation Commission is without jurisdiction or power to enter or enforce a judgment or order adjudicating the claimed contracted rights of a consumer of electric current under a written contract with a utility to receive a stated reduction of rate and refund of money for electric current. The case at bar presents just as much the construction of contractual rights as in that case. I think that in this case as there the rights of the parties should be determined in courts of general jurisdiction. It is not a job for laymen.

The Corporation Commission has no right to tell the producer he could not sell constituents of raw gas separately. Strictly speaking all the order did was to say that when gas is sold at the wellhead it must bring not less than 7¢ per thousand cubic feet. If the producer desired to retain for his use and profit certain constituents he had a perfect right to do so and as long as there was a substantial compliance with the Commission order it should be sufficient to satisfy the Commission. This was its conclusion as to the right of the Phillips Petroleum Company when it disposed of certain elements of gas separately. In

that instance Phillips received 6.9855 cents per thousand cubic feet from all the constituents of the gas.

This Court is given the authority by Section 20, Article IX of our Constitution to exercise its own independent judgment as to both the law and the facts of an appeal involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of this State. Such assertion is made in this case. I reiterate that when it appears from the testimony what the producer has received over nine cents for his gas when he had only to receive seven and when under the plain terms of the contract the producer has retained for his own use and benefit certain elements of the gas from which he gets 45% of the total value of all the gas after it has been through the dehydration plant it is contrary to fundamental conceptions of justice to say that the buyer of the dehydrated gas shall pay 7¢ for the raw gas and not receive credit for the profit received from the other constituents of the gas. He did not intend to buy them. The producer did not intend to sell the hydrocarbons. The Corporation Commission was without authority to make a new contract for the parties.

In this case Natural complied with its part of the contract. It did not know what Panoma was receiving for the hydrocarbons that it retained. It had the right to rely on Panoma to comply with the Commission's rules as its contract with Panoma had been in existence four years and two months when Panoma's application was filed with the Commission. Furthermore it had been two years and a half before any action was taken by Panoma to question the position of Natural.

Neither the Constitution, Acts of our Legislature or any decision of this Court provide a penalty for purchasing residue or dehydrated gas at any price. Since the Commission has not provided for this situation by its orders, it cannot assess such a penalty after the taking. Such action on its part is clearly a violation of the due process clause of both the Federal and State Constitutions.

The producer cannot "have his cake and eat it too." If he is to sell his gas to the Pipe Line Company at seven

cents then he must of necessity account to the buyer for all the by-products or hydrocarbons. Under no interpretation of the contract can Panoma be the employee of Natural. In no way that you can analyze this case can the order of the Corporation Commission be sustained.

I respectfully dissent.

APPENDIX "B"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054 Order No. 19514

PEERLESS OIL AND GAS COMPANY, a corporation,
Applicant,

vs.

CITIES SERVICE GAS COMPANY, a Corporation, and all OPERATORS, PRODUCERS AND TAKERS OF NATURAL GAS in the STATE OF OKLAHOMA, and particularly in the GUYMON-HUGOTON FIELD,
Respondents,

THE SCHOOL LAND COMMISSION OF THE STATE OF OKLAHOMA

and

TEXAS COUNTY LAND & ROYALTY OWNERS ASSOCIATION,
Interveners.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its Court Room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 26th day of November, 1945, at 10:00 o'clock, a. m., on the application of Peerless Oil and Gas Company, a corporation, and on the intervention of the School Land Commission of the State of Oklahoma and the Texas

County Land and Royalty Owners Association, pursuant to order of the Commission setting the cause for hearing and proper and legal notice. The applicant, appearing by and through Earl Pruet, its attorney, the respondent Cities Service Gas Company, a corporation, appearing by and through R. E. Cullison and Joe Rolston, Jr., the School Land Commission of the State of Oklahoma appearing by and through Walter Marlin and W. D. McBee, its attorneys, and the Texas County Land and Royalty Owners Association appearing in person, and the other interested parties appearing not, and the Commission being represented by Floyd Green, Conservation Attorney, and all parties who appeared and entered their appearances herein having announced ready for trial, the applicant and interveners presented their evidence and rested, and Cities Service Gas Company introduced its evidence and rested; and all of said parties having introduced rebuttal evidence, the Commission closed the case and took the matter under advisement.

Now, on this 9th day of December, 1946, the Commission, having considered the matter in conference and each of the Commissioners having read the entire record herein and being well and sufficiently advised, is of the opinion that the application should be granted to the following extent and finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and all parties interested therein and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That Peerless Oil and Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oklahoma.

3. Cities Service Gas Company is a corporation duly organized and existing under and by virtue of the laws of

the State of Delaware and duly authorized to transact business in the State of Oklahoma.

4. That this application involves the Guymon-Hugoton Field, which constitutes one common source of supply of gas, although there are three or more producing horizons that are interconnected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet. There are approximately 300 wells in said pool, some of which are not now connected to pipeline and producing; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that the total reserves are estimated at seven trillion cubic feet of natural gas. The limits of the probable productive area of the Guymon-Hugoton pool in Texas County, Oklahoma, covers part of the following described townships, to-wit:

Townships:		Ranges:
1	North	12 to 17 E. C. M.
1, 2, 3 and 4	North	12 to 18 E. C. M.
	and	
5 and 6	North	12 to 19 E. C. M.

which area may be extended by the drilling of additional wells.

5. Peerless Oil and Gas Company is the owner of valid and subsisting oil and gas leases covering approximately 110,000 acres of minerals in the common source of supply aforesaid, which oil and gas leases include leases covering

Section 8, Township 4 North, Range 16 E. C. M.,
Texas County, Oklahoma,

and

Section 5, Township 4 North, Range 16 E. C. M.,
Texas County, Oklahoma,

in which the two wells of Peerless Oil and Gas Company, referred to in applicant's petition, have been drilled.

6. The Texas County Land and Royalty Owners Association and the School Land Commission of the State of

Oklahoma are the owners of minerals situated and located in the common source of supply aforesaid and are therefore interested in the matters and things involved herein.

7. Cities Service Gas Company, respondent herein, is the owner of various gas wells from which it is now and has been for a considerable length of time producing natural gas from the reservoir into which said well owned by Peerless Oil and Gas Company has been drilled.

8. Cities Service Gas Company is engaged in the transportation of natural gas in and from the Guymon-Hugoton, Oklahoma, gas field for a compensation, hire, and otherwise, from the same common source of supply or reservoir of natural gas into which said well of applicant has been drilled as aforesaid.

9. The production of natural gas in the Guymon-Hugoton gas field is in excess of the market demand.

10. The Cities Service Gas Company is now and has been at all times involved herein engaged in the business of buying and selling natural gas in the Guymon-Hugoton, Oklahoma, gas field and in the State of Oklahoma, and is a common purchaser of natural gas within the meaning of the statutes of the State of Oklahoma defining common purchasers. Cities Service Gas Company purchases natural gas from more than fifty persons, firms and corporations in the State of Oklahoma.

11. The Cities Service Gas Company is in fact a common purchaser of natural gas.

12. The Cities Service Gas Company is now, and has been at all times involved herein, engaged in using the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

13. Cities Service Gas Company is in fact and in law a common carrier of natural gas.

14. Cities Service Gas Company is now and has been at all times involved herein, engaged in taking natural gas from a gas field, to-wit: the Guymon-Hugoton Oklahoma gas field, for purposes other than the purpose of developing a gas or oil field, or operating oil wells or for the purpose of its own domestic use.

15. Cities Service Gas Company, a corporation, respondent herein, produces and purchases natural gas in the State of Oklahoma, transports the same and sells the same both directly and indirectly to the public for light, heat and power.

16. Cities Service Gas Company maintains and operates pipe lines for the transportation of natural gas in said Guymon-Hugoton Oklahoma gas field, one of which said pipe lines is in close proximity to said Section 8, in which the well of applicant involved herein has been drilled.

17. That Cities Service Gas Company, respondent herein, qualified to do business in the State of Oklahoma on the 19th day of April, 1946, and thereby accepted and agreed to comply with the laws of the State of Oklahoma covering its operations thereafter.

18. Said respondent qualified to do business in the State of Oklahoma with full knowledge of the laws of the State of Oklahoma relating to the ratable taking of natural gas and all statutes relating to natural gas, and was thereafter a party in the case of *Oklahoma Natural Gas Company* vs. *State*, 161 Okla. 104, 17 Pac. (2) 488, which decision required ratable taking of gas under and by virtue of an order similar to that sought in the instant case.

19. That the operation of the respondent, Cities Service Gas Company, constitute it a transporter of natural gas.

20. A bona fide dispute has arisen between the applicant, Peerless Oil and Gas Company, a corporation, and respondent Cities Service Gas Company, as to the price, measurement and terms of the taking of natural gas by Cities Service Gas Company from the gas wells of Peerless Oil and Gas Company drilled into and producing from said common source of supply in Section 5 and 8, Township 4 North, Range 16 E. C. M., Texas County, Oklahoma.

21. Peerless Oil and Gas Company, prior to the time of the filing of this action, made a tender to Cities Service Gas Company of the natural gas to be produced from the wells in said Section 5 and 8, and Cities Service Gas Company signified its willingness to take the natural gas therefrom, but refused to pay more than 4¢ per thousand cubic feet of natural gas, measured at a pressure of 16.4 pounds ab-

solute pressure per square inch, at the wellhead and refused to take natural gas from said wells unless applicant herein would dedicate all of its oil and gas leases covering approximately 110,000 acres of minerals in the Guymon-Hugoton pool for the life of said leases. A dispute as to price, measurement and terms of taking natural gas arose as a result thereof.

22. Cities Service Gas Company, respondent herein, continued to refuse to take natural gas from said two wells unless applicant would dedicate all of its acreage in the field to Cities Service Gas Company at a price of 4¢ per thousand cubic feet at the wellhead for the life of the leases until long after the filing of this application when Peerless Oil and Gas Company, applicant herein, and Cities Service Gas Company, respondent herein, agreed that said wells be connected to the pipe line of Cities Service Gas Company and that Cities Service Gas Company would begin to take natural gas from said wells; that Cities Service Gas Company would begin making payment upon the purchase price of the natural gas taken by it from said wells at the rate of 4¢ per thousand cubic feet of natural gas at the wellhead, plus ½¢ per thousand cubic feet for gathering and delivering charges, or a total of 4½¢ per thousand cubic feet delivered into the pipelines of Cities Service Gas Company; without prejudice to a final determination of the controversy in regard to measurement and price pending before the Corporation Commission of the State of Oklahoma in the above entitled cause, and provided that in the event the Corporation Commission of the State of Oklahoma should fix a higher price of natural gas or a different measurement and such order should be finally upheld, Cities Service Gas Company would pay to Peerless Oil and Gas Company the difference between the amount so paid and the price so fixed by the Corporation Commission of the State of Oklahoma, all as evidenced by a stipulation on file herein.

23. The persons and corporations operating pipelines and transporting natural gas out of the Guymon-Hugoton Oklahoma gas field own or control a greater portion of the oil and gas leases in said field and control the outlets for

natural gas produced in said field, and have therefore been able to dictate and have dictated the price, measurement and terms of the taking of natural gas taken in the Guymon-Hugoton Oklahoma gas field. Producers without a connection have been required to accept the price, measurement and terms offered by operators of pipelines in said field or shut down their wells.

24. There is no competitive market of natural gas in the Guymon-Hugoton Oklahoma oil field, but said market has been stifled by reason of the control of acreage and markets by the pipeline operators in said field, and as a result natural gas is being taken out of the Guymon-Hugoton Oklahoma gas field at a price far less than its actual, or fair market value, and at a price which is far less than the value of natural gas for heating and other purposes as compared to the value of other fuels.

25. As a result of the controlled market, market prices, measurement and terms of taking of natural gas in the Guymon-Hugoton field, one of the great resources of the State of Oklahoma, to-wit: natural gas, is being taken out of the Guymon-Hugoton Oklahoma field and out of the State of Oklahoma at a price which is far less than its replacement value.

26. Various purchasers of natural gas, in the Guymon-Hugoton field, purchase natural gas from different producers and contracts providing for different prices, terms and conditions.

27. Cities Service Gas Company purchases natural gas in the Guymon-Hugoton Oklahoma gas field under contracts containing different terms and conditions as evidenced by its contract with Skelly Oil Company, its contract with Republic Natural Gas Company, and its contract with Hagy, Harrington and Marsh.

28. The operations of the respondent, Cities Service Gas Company, a corporation, constitute it a transporter of natural gas.

29. The operations of respondent, Cities Service Gas Company, constitute it a common carrier.

30. The operations of the respondent, Cities Service Gas Company, constitute it a common purchaser of natural gas.

31. The operations of respondent, Cities Service Gas Company, constitute it a public utility.

32. The taking of natural gas from the Guymon-Hugoton Oklahoma field at prices and under terms and measurement now prevalent in said field results in and causes:

(a) Economic waste of a great natural resource, to-wit: natural gas;

(b) Actual physical waste of natural gas;

(c) Loss to the royalty owners in said field;

(d) Loss to the State of Oklahoma in revenues in the form of gross production taxes;

(e) Inequitable taking of natural gas from the common source of supply involved;

(f) Discrimination against various producers in the field.

33. By reason of the dispute between the Peerless Oil and Gas Company, applicant herein, and the respondent, Cities Service Gas Company, a corporation, as to the price and terms of the taking of natural gas from said wells of applicant, this Commission has authority to fix and should fix a minimum price and terms for the taking of natural gas to be taken in the Guymon-Hugoton field.

34. For the purpose of preventing waste, economic and physical, or natural gas, for the purpose of protecting correlative rights, and to insure the greatest ultimate recovery of natural gas from the common reservoir involved, this Commission should not permit natural gas to be taken out of the producing formations in the Guymon-Hugoton field, at a price less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugoton field in Texas County, Oklahoma, at a price, at the wellhead, of less than 7¢ per thousand cubic feet of natural

gas measured at a pressure of 14.65 pounds absolute pressure per square inch.

2. This order shall be effective as of January 1st, 1947.

DONE AND PERFORMED by the Corporation Commission at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 9th day of December, 1946.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND,
Chairman,
RAY O. WEEMS,
Vice-Chairman,
----------,
Commissioner.

ATTEST:
TOM MCMURRAY,
Secretary.

APPENDIX "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 1054 Order No. 19702

PEERLESS OIL AND GAS COMPANY, a corporation,
Applicant,

vs.

CITIES SERVICE GAS COMPANY, a corporation, and ALL OPERATORS, PRODUCERS AND TAKERS OF NATURAL GAS IN THE STATE OF OKLAHOMA, and particularly in the GUYMON-HUGOTON FIELD,
Respondents,

THE SCHOOL LAND COMMISSION of the State of Oklahoma and TEXAS COUNTY LAND & ROYALTY OWNERS ASSOCIATION,
Intervenors.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma on the 31st day of January, 1947,

at 1:30 o'clock p. m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman and Ray C. Jones, Commissioner, sitting, R. M. Williams, Attorney of Bartlesville and Harry Turner, Attorney of Oklahoma City, appeared for the applicant, Phillips Petroleum Company; Earl Pruet, Attorney of Oklahoma City, appeared for the respondent, Peerless Oil & Gas Company, and Floyd Green, Conservation Attorney, appeared for the Commission.

After hearing the cause, the matter was continued until February 4th, 1947, at 1:30 o'clock, p. m., for the purpose of hearing oral argument. On February 4th, 1947, after hearing oral argument and being well and sufficiently advised in the premises, the Commission denied the application and therefore finds as follows:

"EXHIBIT A"

FINDINGS

1. That this is an application of the Phillips Petroleum Company, for an order vacating Orders Numbers 19514 and 19515 heretofore issued in this cause on the 9th day of December, 1946.

2. That this Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law, and that protests have been filed to the granting of the order.

3. That this cause was originally heard prior to December 9th, 1946, and that Orders Numbers 19514 and 19515 were issued pursuant to notice regularly given and that the applicant herein, Phillips Petroleum Company had notice of the proceedings and did not enter an appearance therein.

4. That Order No. 19514 had for its purpose the fixing of a minimum price for natural gas at the wellhead in the Guymon-Hugoton Field, which price was applicable to all producers, purchasers and takers of gas in the field; that the applicant herein, Phillips Petroleum Company, is both a producer and taker of natural gas in the field and trans-

ports the gas produced from its leases in Texas County, across the Oklahoma line to a gasoline plant located in Texas, one-half mile south of the Oklahoma line adjacent to Texas County, Oklahoma; that all of the gas produced by Phillips Petroleum Company in Texas County, Oklahoma, is transported to said plant where 6/10ths of one gallon of liquid hydrocarbons are extracted from each thousand cubic feet of gas produced in Texas County, Oklahoma; that the residue gas is then transported by Phillips Petroleum Company from said plant to the nearby location where same is delivered to the Panhandle Eastern Pipe Line Company at a price presently in the amount of 4.67 cents per thousand cubic feet; that the applicant herein then transports daily some 80,000 gallons of liquid hydrocarbons extracted from the natural gas at the plant in Texas, to another plant owned by applicant near Borger, Texas, where the liquid hydrocarbons are then further refined and sold by the applicant herein; that the larger percentage of the liquid hydrocarbons extracted is 26-70 gasoline which has a current market value of between 5 and 5¼ cents per gallon; that the applicant herein, Phillips Petroleum Company, is now realizing from the natural gas produced in the Guymon-Hugoton Field, the equivalent of approximately 7¢ per thousand cubic feet at the wellhead within the terms and meaning of Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, did not see fit to introduce any evidence as to profits or leases from the production of natural gas in the Guymon-Hugoton Field and since the application filed herein alleged hardship if forced to comply with Orders Nos. 19514 and 19515, it was incumbent upon the applicant to introduce proof showing wherein such hardship would occur.

5. That applicants complain that paragraph 1 of Order No. 19514 and paragraph 4 of Order No. 19515 prohibit said applicant from producing any natural gas in the Guymon-Hugoton Field, and taking same from the formation because of the requirement that said gas must be sold at a price of 7¢ per thousand cubic feet at the wellhead; that said orders were meant to prohibit the production of nat-

ural gas from the producing formations in said field unless same was sold at a price of 7¢ per thousand cubic feet on the measurement basis provided for in said orders, if same were sold, but if not sold, that said gas should be so utilized and/or sold, that the producer would realize therefrom the equivalent of 7¢ per thousand cubic feet at the wellhead and on the pressure basis provided for in Orders Nos. 19514 and 19515; that the applicant, Phillips Petroleum Company, is realizing from the utilization and sale of natural gas produced by it in the Guymon Field, the equivalent of 7¢ per thousand cubic feet at the wellhead, on the pressure basis of measurement provided for in said orders for all natural gas produced by it in the Guymon-Hugoton Field; therefore in that respect applicant is already complying with Orders Nos. 19514 and 19515.

6. That inefficient and wasteful utilization of natural gas produced in said field have resulted and will result, unless producers in said field receive for said natural gas or realize the equivalent of 7¢ per thousand cubic feet of natural gas at the wellhead, measured at pressure of 14.65 pounds absolute pressure per square inch; that the price presently being paid for natural gas varies throughout the field with no uniform price and that this Commission, unless it fixes a uniform price for the field, is permitting discrimination in price which adversely affects many producers and royalty owners; that the price being paid has no relation to the intrinsic value of the natural gas and is not a comparable price with other fuels; that it has no relation to the replacement value of the natural gas and one of Oklahoma's natural resources is being dissipated and wasted all to the detriment of the producers, royalty owners, School Land Commission, and the State of Oklahoma, and unless a price is fixed that has some relation to its actual value, the inefficient and wasteful utilization of gas from the Hugoton Field will result in great losses of one of Oklahoma's most valuable resources.

7. That applicant herein, Phillips Petroleum Company, is not injured by the application of a 7¢ price of all gas produced by it in the Hugoton Field since it is presently realizing approximately that amount at this time.

8. That this application should be denied in the interest of preventing: (a)—economic waste of a great natural resource to wit: natural gas, (b)—actual physical waste of natural gas in the Hugoton Field, (c)—loss to the producers and royalty owners in said field, (d)—loss to the State of Oklahoma in revenues in the form of gross production tax and loss to the schools of the State of Oklahoma in the form of lessening royalties accruing to the School Land Commission, (e)—the inequitable taking of natural gas from the common source of supply owned by all, (f)—discrimination as to prices paid throughout the field, which discrimination adversely effects many royalty owners and producers, (g)—the inefficient and wasteful utilization of natural gas.

9. That this application should be denied.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma, that this application to vacate Orders Numbers 19514 and 19515 heretofore issued by this Commission in this cause on the 9th day of December, 1946, be and the same is hereby denied.

DONE AND PERFORMED this the 4th day of February, 1947.

CORPORATION COMMISSION OF OKLAHOMA,
REFORD BOND,
Chairman,
RAY O. WEEMS,
Vice-Chairman.
.....,
Commissioner.

ATTEST:
TOM MCMURRAY,
Secretary.
(SEAL)

APPENDIX "D"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause CD No. 3048 Order No. 24745

IN THE MATTER OF THE APPLICATION OF PANOMA CORPORATION FOR A CLARIFICATION OF ORDER NO. 19514, AND FOR AN ORDER OF THIS COMMISSION DIRECTING THE ACTION TO BE TAKEN BY APPLICANT AND NATURAL GAS PIPELINE COMPANY OF AMERICA UNDER AND PURSUANT TO SAID ORDER.

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 14th day of February, 1951, on the application of Panoma Corporation for an order interpreting and enforcing Order No. 19514, issued by this Commission, at which time Natural Gas Pipeline Company of America requested that said cause be continued and the cause was then continued for hearing to the 5th day of April, 1951.

On the 5th day of April, 1951, said cause was again called for hearing on the application filed herein by Panoma Corporation and the response thereto filed by Natural Gas Pipeline Company of America. The applicant was represented by T. Murray Robinson, Wallace E. Robertson, Kent W. Shartel and Richard W. Fowler, its attorneys, and the respondent, Natural Gas Pipeline Company of America was represented by its attorneys, S. A. L. Moran, Warren Spies, D. H. Culton and Monnet, Hayes, Brown and Bullis, by Coleman Hayes; the Commission was represented by Floyd Green, Conservation Attorney, and no other persons appeared. All appearing parties announced ready for trial, and the applicant and respondent presented their evidence, and said cause was heard throughout the day of April 5, 1951, and continued for further hearing to April 6, 1951, and on the 6th day of April, 1951 the parties appearing as before, the Commission heard the arguments

of counsel and both parties rested, and the Commission closed the case and took the matter under advisement, authorizing counsel to file briefs in support of their respective positions.

Now, on this 17th day of May, 1951, the Commission having considered the matter in conference, and each of the Commissioners being fully advised as to the entire record and having considered all evidence introduced, the arguments of the parties and the briefs filed, and being well and sufficiently advised, is of the opinion that the Commission should act on the application to the following extent, and the Commission finds as follows:

Findings

1. That notice by publication of the filing of the application and the time and place of hearing thereon and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in the application and of the parties interested therein, and has jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That, pursuant to a contract dated December 1, 1946, Harrington & Marsh, the predecessors of Panoma Corporation, during August of 1948, commenced the delivery of natural gas from wells owned by them in the Guymon-Hugoton field in Texas County, Oklahoma, to Natural Gas Pipeline Company of America, and thereafter such deliveries were continued by Panoma Corporation as purchaser and successor to all of the properties, rights and obligations of Harrington and Marsh; that the parties hereto have agreed that all determinations by this Commission may be made as if said deliveries had at all times been made by Panoma Corporation.

3. That said gas was delivered, but not metered or measured, at a compressor station owned and operated by Natural Gas Pipeline Company of America and located in Texas County, Oklahoma; that the amount of gas so delivered could be and may at all times be computed although it is not there metered.

4. That the provisions of Order No. 19514 became effective as of January 1, 1947, and after said date, no gas produced therefrom could legally be sold or purchased in the Guymon-Hugoton Field in Texas County, Oklahoma, at a price of less than seven cents (7¢) per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute pressure per square inch and does and did prohibit sales and purchases for any lesser amount.

5. That uncertainty as to the finality of this Commission's Order No. 19514 created by the appeal therefrom to the Supreme Court of the State of Oklahoma, and the Supreme Court of the United States justified applicant in continuing the delivery of gas, without receiving payment, concurrent with the delivery, at the minimum price fixed by this Commission, until the time said order was affirmed by the Supreme Court and the mandate of affirmance filed with this Commission; this Commission had no knowledge of the acts of the parties, which the Commission now finds were in violation of its order, until this proceeding was filed.

6. That deliveries or acceptance of gas in Oklahoma, produced from the Guymon-Hugoton field in Oklahoma, that are not in compliance with Order No. 19514 are prohibited by said Order and the deliveries of Panoma Corporation and receipt or acceptance by Natural Gas Pipeline Company of America are not in compliance with said order and are in violation thereof and should be stopped.

7. That the amount which the Natural Gas Pipeline Company was obligated to pay and should have paid to comply with this Commission's Order, was seven cents (7¢) for each thousand cubic feet of gas, measured at an absolute pressure base of 14.65 pounds per square inch, which the Panoma Corporation delivered to the Natural Gas Pipeline Company of America at its compressor station and such respondent has not paid such amount and has refused to pay such amount although requested to do so.

8. That the stipulated amount of gas so delivered by Panoma Corporation to Natural Gas Pipe Line Company of America at said compressor station to the first day of January, 1951, was 70,992,632 thousand cubic feet, and that

is the amount, so far as it can be determined, which was produced at the wellhead.

9. That a reasonable time hereafter in which to comply with said order is twenty (20) days, and Natural Gas Pipeline of America should, within 20 days from the date of this order, pay Panoma Corporation the difference between the amount it has heretofore paid for such gas delivered to it by Panoma and the amount which it should have paid for the gas as herein determined; computed at seven cents (7¢) per thousand cubic feet measured at a pressure base of 14.65 pounds per square inch absolute, and unless Natural Gas Pipeline Company of America makes such payment in compliance with said order during the period and in the manner provided herein, Panoma Corporation should be directed to thereupon stop delivering gas to Natural Gas Pipeline Company of America and to file with this Commission an application for a share in the available markets that are complying with the orders of this Commission.

10. The Commission further finds that Order No. 19702, entered upon the application of Phillips Petroleum Company, was not entered as a fieldwide order, but was entered as affecting a part thereof only and on the application of an owner of a portion of the wells in the field, and was based on facts presented to the Commission in support of the special relief or exception which the applicant in that case had requested; that therein the Commission specifically found that applicant "did not see fit to introduce any evidence as to profit or losses from the production of natural gas from the Guymon-Hugoton Field"; that this Commission does not feel it is bound herein by any determination of facts or any order entered therein; that this Commission is not required herein to vacate, modify or interpret Order No. 19702; however since respondent's contention that such order is in conflict with the findings and judgment of the Commission herein, this Commission deems it appropriate to now find that when it entered its Order No. 19514 determining:

> "That no natural gas shall be taken out of the producing structures or formations in the Guymon-Hugo-

ton field in Texas County, Oklahoma, at a price at the wellhead, of less than 7¢ per thousand cubic feet of natural gas measured at a pressure of 14.65 pounds absolute pressure per square inch",

that it applied to all producers, purchasers and takers of gas from said field, and that no sales or purchases of natural gas would be thereafter permitted in the Guymon-Hugoton field at a price of less than 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch; that the minimum price thus established would govern at the wellhead and at any other point in said Guymon-Hugoton field at which said gas would thereafter be delivered by a producer to a purchaser, so that the owners of the gas within said reservoir, being the lessees and the lessors, and other persons owning an interest in the gas in place, would at all times from and after the issuance of said order, receive from the delivery of their gas, as owners and producers thereof, not less than the minimum price fixed by the Commission.

11. That Order No. 19514 should be strictly enforced for the prevention of waste, the prevention of which is the basic purpose of said order and Natural Gas Pipeline Company of America should not be permitted to plead its contract in avoidance thereof; and the contracts of the parties, neither by direction, implication or complication can defeat the effects of the order of this commission and to hold otherwise would cause and permit waste, and to adopt or accept the contentions of respondents would cause and invite discrimination and a general breakdown of the regulations preventing waste and protecting the correlative rights of the parties.

12. That to protect the correlative rights of the parties and to prevent waste, this order should be issued.

Order

It Is Therefore Ordered by the Corporation Commission of Oklahoma as follows:

1. That Natural Gas Pipeline Company of America is granted 20 days from date hereof in which to comply with

Order No. 19514 by paying unto Panoma Corporation the difference between the amount which it has paid Panoma Corporation and the amount Panoma Corporation was entitled to receive for gas heretofore delivered and paid for at a lesser price, so that the total amount paid for gas delivered during the period covered by such payments will equal 7¢ per thousand cubic feet for the amount of gas delivered to said compressor station, and measured at a pressure base of 14.65 pounds absolute pressure per square inch, and if it does not so do within such time, Panoma Corporation is directed to forthwith cease delivering gas to Natural Gas Pipeline Company of America.

2. That Natural Gas Pipeline Company of America does not comply with Order No. 19514 by paying to Panoma Corporation 6¢ per thousand cubic feet of gas, for a part of the gas delivered, measured at a pressure base 16.5 pounds per square inch absolute pressure, and it is directed to desist from so doing and is directed to comply with said order.

3. That Natural Gas Pipeline Company of America shall pay Panoma Corporation for the gas delivered to its compressor station, the sum of 7¢ per thousand cubic feet, measured at a pressure base of 14.65 pounds absolute per square inch. In the event of its failure to do so, Panoma Corporation is ordered to stop delivery of gas to Natural Gas Pipeline Company of America.

DONE AND PERFORMED by the Corporation Commission of Oklahoma at its office in the Capitol Office Building, Oklahoma City, Oklahoma, this 17th day of May, 1951.

CORPORATION COMMISSION OF OKLAHOMA,
/s/ REFORD BOND,
Chairman,
/s/ RAY O. WEEMS,
Vice-Chairman,
/s/ ROY C. JONES,
Commissioner.

ATTEST:
/s/ TOM McMURRAY,
Secretary.